

The Insolvency Act 1986

**Administrator's progress report**

Name of Company

AAA Securities Limited

Company number

04480945

In the

Leeds District Registry

(full name of court)

Court case number

1446 of 2011

(a) Insert full  
name(s) and  
address(es) of  
administrator(s)

We (a)

John Twizell  
Geoffrey Martin & Co  
St Andrew House  
119-121 The Headrow  
Leeds  
LS1 5JWGeoffrey Martin  
Geoffrey Martin & Co  
St Andrew House  
119-121 The Headrow  
Leeds  
LS1 5JW

administrator(s) of the above company attach a progress report for the period

From

To

(b) Insert date

(b) 04/04/2012

(b) 03/10/2012

Signed

Joint / Administrator(s)

Dated

18 October 2012.

**Contact Details:**

You do not have to give any contact information in the box opposite but if you do, it will help Companies House to contact you if there is a query on the form

The contact information that you give will be visible to searchers of the public record

John Twizell  
Geoffrey Martin & Co  
St Andrew House  
119-121 The Headrow  
Leeds  
LS1 5JW

DX Number

0113 2445141  
DX Exchange

de

When you have completed and signed this form, please send it to the Registrar of Companies at -  
**Companies House, Crown Way, Cardiff CF14 3UZ DX 33050 Cardiff**

SATURDAY



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20/10/2012

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COMPANIES HOUSE



GEOFFREY  
MARTIN  
& CO

4th Floor  
St Andrew House  
119 - 121 The Headrow  
Leeds LS1 5JW

Telephone 0113 244 5141  
Fax 0113 242 3851

E-Mail [info@geoffreymartin.co.uk](mailto:info@geoffreymartin.co.uk)  
[www.geoffreymartin.co.uk](http://www.geoffreymartin.co.uk)

18 October 2012

**To All Creditors**

*when telephoning please  
ask for –*

Dominic Wolski

Dear Sirs

**AAA Securities Limited ("the Company") (In Administration)**

Following my appointment as Joint Administrator on 04 October 2011 I write to provide creditors with my second report on the progress of the Administration pursuant to Rule 2.47 of the Insolvency Rules 1986 ("the Rules")

The Administration was due to terminate on 3 October 2012. I determined that an extension would be required to allow the Joint Fixed Charge Receivers, Mark Swiers and Michael Hardy of Sanderson Weatherall ("LPARs"), further time to complete the sale of the Property with the security of the Administration Order to aid and protect their position. It was decided that in the first instance an extension by consent of the secured creditor, the Bank of Ireland plc ("the Bank") would be sought rather than an application to Court. The Bank granted consent and the Administration has been extended until 3 April 2013.

This report should be read in conjunction with my report dated 28 November 2011 prepared pursuant to Paragraph 49 of Schedule B1 of the Insolvency Act 1986 ("the Act") and my previous progress report dated 30 April 2012.

The information that is required to be disclosed in accordance with Rule 2.47(a) to (c) of the Rules is attached at Appendix A.

**1 Executive summary**

I have not produced an estimated outcome statement as, based on current information and my experience of the Administration to date, I estimate that the Bank will suffer a significant shortfall, the size of which will be determined by the Property realisations achieved by the LPARs.

**2 Administrators' proposals**

My proposals for achieving the purpose of the Administration, as detailed in my report to creditors dated 28 November 2011, were deemed approved without modification. This is in accordance with Rule 2.33(5) of the Rules, as amended by the Insolvency (Amendment) Rules 2010.

The purpose of the Administration remains that of realising property in order to make distributions to the secured creditor.

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### **3. Receipts and payments account**

Attached as Appendix B is the Joint Administrators' receipts and payments accounts for the period 4 April 2012 to 3 October 2012 and, cumulatively, from 04 October 2011 to 3 October 2012

I comment below specifically on matters that have arisen since my previous report

### **4 Property at Jewel House, 75-77 High Street, Manchester ("the Property")**

As previously reported, the Property consists of two commercial and fourteen residential properties situated at Jewel House, which remain unsold

As stated above, Mark Swiers and Michael Hardy were appointed as LPARs over the Property on 1 September 2011

The LPARs are continuing to manage all aspects of the Property in relation to the two commercial and fourteen residential tenants

The Joint Administrators have assisted the LPARs with various requests for information in relation to the Property and in relation to other issues affecting the Property (see below)

### **5 Variations to the leases and legal action**

I received various pieces of correspondence from the Land Registry, which following further investigation show that seven Deeds of Variation of leases at Jewel House were submitted to the Land Registry in January 2012, namely, some three months following my appointment as Joint Administrator

My solicitors, Eversheds LLP, have written to the Land Registry to request removal of the entries made. I am aware that the LPARs have issued legal proceedings against the parties involved in making the Deeds of Variation and those that have benefited from the changes. These matters remain on-going

### **6. LPAR rent action**

Pulse Property Management Limited ("PPM"), of which Sunil Aggarwal is a director, appear to have retained some £20,000 in respect of rents due and payable to the Company

It was agreed that any action for the recovery of this debt should be by the LPARs as it relates directly to the Property and their role

### **7 Administration strategy**

The principal purpose of the Administration has been to support the LPARs with a view to maximising the realisations available to the secured creditor

We have passed all applicable matters relating to the Property to the LPARs

This role has been expanded in view of the legal action required in respect of the "alleged" Deeds of Variation and the rent action



## **8. Corporation tax returns**

I am obliged to prepare and submit Corporation Tax returns relating to the period of Administration. This is yet to be done as the first accounting period has just concluded.

## **9 Investigations**

I have a duty to investigate the extent of the Company's assets, including potential claims against third parties including directors, and to report my findings to creditors, subject to considerations of privilege and confidentiality and whether those investigations and/or any potential litigation might be compromised.

As stated earlier, I have been made aware that lease variations were signed by the director, Manoj Aggarwal and submitted to the Land Registry almost three months following the date of my appointment without consent of the secured creditor. The lease variations are now subject to legal proceedings. Accordingly, any further action on my part will be dependent upon the outcome of the LPARs' legal action.

I previously reported that the Company's director had not furnished me with the Company's books and records. This position has not changed.

I have previously invited creditors to notify me in writing any matters of concern to them. That invitation is repeated in this report.

## **10. Estimated outcome for creditors**

I have not included an Estimated Outcome Statement as I believe it would be prejudicial to the Bank's position. No financial information from the director other than the Statement of Affairs has been provided.

### **10.1 Secured creditor**

The Bank is the principal secured creditor and holds security in the form of a floating charge, registered on 26 August 2006, together with the further fixed charge security as scheduled at appendix A.

The Bank was owed approximately £2.5 million at the date of our appointment. This figure does not take into account ongoing interest and charges.

No payments have been made to the Bank to date. Current estimates indicate that the Bank will suffer a significant shortfall.

### **10.2 Preferential creditors**

I have not received any preferential creditor claims to date, nor am I aware of any.

### **10.4 Prescribed Part and unsecured creditors**

I am obliged to consider setting aside a proportion of funds for the benefit of the unsecured creditors ("the Prescribed Part") in accordance with S176A of the Act. Based on present information this is not applicable in this Administration, as it is anticipated that there will not be any funds available to the Bank under its floating charge security.



## **11. Joint Administrators' costs**

### **11.1 Basis of the Joint Administrators' remuneration and disbursements**

In my report prepared in accordance with Paragraph 49 of Schedule B1 of the Act, setting out my proposals, I sought agreement that the underlying basis of my firm's remuneration and disbursements be fixed by reference to time costs properly incurred at my firm's standard charging rates. In addition, I sought that my firm's disbursements be drawn in line with my firm's charging and disbursements policy.

As previously reported, my proposals were deemed to be approved. However, due to the anticipated shortfall to the Bank, I will agree and seek approval for my fees and disbursements with the Bank before drawing any fees or disbursements. No fees and disbursements have been sought or drawn to date.

### **11.2 Remuneration charged and disbursements incurred during the period of this report**

Details of my firm's time costs charged and disbursements incurred during this period, and in total since my appointment, are shown on the attached Appendix C. I have provided this information in this format as required by the provisions of the Statement of Insolvency Practice 9.

Appendix D also contains details of my firm's current charging and disbursements policy.

In common with other professional firms, our standard charging rates are reviewed periodically to take account of inflation and other matters affecting costs. Since the original approval of the basis of my remuneration on 8 December 2011, there have been no increases to our charge out rates. Minor adjustments have been made to some disbursement charges to accommodate increased costs. Details are provided at Appendix C.

### **11.3 Remuneration and disbursements drawn during the period of this report**

No Category 1 or 2 disbursements have been drawn in relation to my firm's disbursements to date.

### **11.4 Expenses incurred and paid during the period of this report**

A detailed breakdown of the Expenses, Category 1 and Category 2 disbursements is fully disclosed in appendix C.

### **11.5 Creditors' guide to fees and statement of creditors' rights**

If you require further information relating to Administrators' remuneration, expenses and disbursements please see Appendix D. This also gives details of your rights as a creditor.

### **11.6 Pre-Administration costs**

I have previously reported that I would seek agreement from the Bank that the Joint Administrators might pay, as an expense of the Administration, pre-Administration costs of £2,900 plus disbursements and VAT. These costs related to advice provided by Geoffrey Martin & Co (£1,650) and Eversheds LLP (£1,250) to the Bank in connection with the making of the appointment and in determining that it was reasonably likely that the purpose of the Administration would be achieved. Due to insufficient funds in the Administration, we have deferred seeking authority to draw these fees.



## **12 Exit from Administration**

I propose that in the event that there are no funds available for distribution to unsecured creditors that the Company moves from Administration to dissolution under Paragraph 84 of Schedule B1 of the Act

The Joint Administrators will seek the Bank's agreement that the Joint Administrators' discharge from liability, pursuant to Paragraph 98 of Schedule B1 of the Act, shall take effect 14 days following the Company filing the notice of moving from Administration to dissolution

## **13. Outstanding matters**

The principal outstanding issues of the Administration include the following

- (i) the sale of the Company's Property,
- (ii) the submission of VAT and Corporation Tax returns to HM Revenue & Customs for the Administration period,
- (iii) the agreement of the Joint Administrators' fees with the secured creditor of the Company and other Administration costs

If creditors have any queries about the contents of this report or any other matter relating to this case, please contact either of my colleagues, Dominic Wolski at the above office

Yours faithfully  
For and on behalf of  
AAA Securities Limited

**John Twizell**

Joint Administrator  
Acting as agent of the Company  
and contracting without personal liability

The affairs, business and property of the Company are managed by the Joint Administrators who act as the Company's agents and without personal liability

John Twizell is licensed in the United Kingdom by Institute of Chartered Accountants of England & Wales  
Geoffrey Martin is licensed in the United Kingdom by Insolvency Practitioners Association

## Appendix A

### AAA Securities Limited (In Administration)

Details relating to the appointment of Joint Administrators of the Company is provided below

<b>Court details:</b>	High Court of Justice, Chancery Division, Leeds District Registry		
<b>Court number:</b>	1446 of 2011		
<b>Date of appointment:</b>	4 October 2011		
<b>Administrators' details:</b>	John Twizell Geoffrey Martin & Co St Andrew House 119-121 The Headrow Leeds, LS1 5JW	Geoffrey Martin Geoffrey Martin & Co St Andrew House 119-121 The Headrow Leeds, LS1 5JW	
<b>Appointment by:</b>	The Qualifying Floating Chargeholder of the Company in accordance with Paragraph 14 of Schedule B1 of the Insolvency Act 1986		

In accordance with Paragraph 100(2) Schedule B1 of the Insolvency Act 1986, the Joint Administrators confirm that any act required or authorised under any enactment to be done by an Administrator may be done by either of us individually or jointly

The EC Regulations on Insolvency Proceedings 2000 do apply and the Company's centre of main interest is in the United Kingdom. In accordance with these Regulations, the Administration represents main proceedings

An extension of the administration for a another six months (being on or before 3 April 2013) was granted by the secured creditor, the Bank of Ireland (UK) Plc

The statutory information of the Company as extracted from the Company's file at Companies House is as follows

<b>Company number:</b>	04480945		
<b>Date of incorporation:</b>	9 July 2002		
<b>Registered office:</b>	c/o Geoffrey Martin & Co St Andrew House 119-121 The Headrow Leeds, LS1 5JW	Formerly at 320 Great Western Street Manchester Lancashire, M14 4LP	
<b>Trading address:</b>	Jewel House, 75-77 High Street, Manchester		
<b>Principal activity:</b>	Development and sale of real estate and lettings		
<b>Issued and called up share capital:</b>	50,000 Ordinary £1 shares		
<b>Director: (within last 3 years)</b>	Manoj Kumar Aggarwal	<b>Appointed</b> 09/07/2002	<b>Resigned</b> -
<b>Company secretary: (within last 3 years)</b>	Jacqueline Aggarwal	09/07/2007	02/10/2009
<b>Shareholder:</b>	Manoj Kumar Aggarwal 50,000 Ordinary shares		

**Charges registered  
(per Companies House):**

The Governor and company of the Bank of Ireland (UK) Plc holds security in the form of a legal charge over land known as Jewel House, 75 and 77 High Street and 10 to 20 (even numbers) Thomas Street. The legal charge was created on 23 August 2006 and registered on 26 August 2006.

The Governor and company of the Bank of Ireland (UK) Plc holds security in the form of a fixed and floating debenture over the Company's property and assets. The debenture was created on 23 August 2006 and registered on 26 August 2006.

The Governor and company of the Bank of Ireland (UK) Plc holds security in the form of a security assignment. The security assignment was created on 23 August 2006 and registered on 26 August 2006.

Prior to the Bank of Ireland (UK) Plc ("BOI") being granted security the Company banked with and granted security to the Bank of Scotland ("BOS"). They held charges which are detailed below at Companies House as outstanding, however I am advised there is a deed of release from BOS given at the time of BOI entering into agreement with the Company to replace BOS. These charges should have been noted as satisfied by the director.

The Governor and company of the Bank of Scotland holds security in the form of a fixed and floating debenture over the Company's property and assets. The debenture was created on 21 November 2003 and registered on 26 November 2003.

The Governor and company of the Bank of Scotland holds security in the form of a legal charge over land known as Jewel House, 75 and 77 High Street and 10 to 20 (even numbers) Thomas Street. The legal charge was created on 21 November 2003 and registered on 26 November 2003.

The Bank of Ireland (UK) Plc have confirmed that the Bank of Scotland charges have been satisfied as part of the Company's refinancing. The Bank of Scotland charges have simply not been removed at The Registrar of Companies.



**AAA Securities Limited  
(In Administration)  
Joint Administrators' Abstract of Receipts & Payments**

Statement of Affairs	From 04/10/2012 To 04/10/2012	From 04/10/2011 To 04/10/2012
	<u>NIL</u>	<u>NIL</u>
REPRESENTED BY		<u>NIL</u>

\_\_\_\_\_  
John Twizell  
Joint Administrator

<b>Case Name</b>	AAA Securities Limited
<b>Court and Number</b>	Leeds District Registry No 1446 of 2011
<b>Office Holder</b>	John Twizell and Geoffrey Martin
<b>Firm</b>	Geoffrey Martin & Co
<b>Address</b>	St Andrew House 119-121 The Headrow Leeds LS1 5JW
<b>Telephone</b>	0113 2445141
<b>Reference</b>	AAAS001/JT/GM/MG/DW
<b>Type of Appointment</b>	Administration
<b>Date of Appointment</b>	4 October 2011

#### **CHARGING AND DISBURSEMENTS POLICY (Leeds Office)**

##### **Time Costs**

The firm's hourly charge out rates are revised annually from 1 May. The rates currently in use are within the following bands

	£
Partner	325
Senior Manager	300
Manager	220 – 285
Senior Administrator	140 – 185
Junior Administrator and Support Staff	65 – 110

Secretarial and cashiers time is charged to the case and their rates are included within the above hourly rates identified above as appropriate. Time is charged in units of 6 minutes.

##### **Disbursements**

A disbursement charge relating to the recovery of overhead costs is levied at the rate of £6.75 per creditor. This sum is drawn at the outset of the case and on each anniversary thereafter and covers printing, postage, stationery, photocopying, telephone and fax usage.

Company Searches and Electronic Verification of Identity (charges introduced on 1 March 2012)

Where these are undertaken on a case, the cost is recharged to the case as follows

Company Searches - £1 plus VAT per document searched  
Electronic Verification of Identity - £2 plus VAT for each search

Outsourced printing and/or photocopying will be charged at cost in addition to the above

Travelling expenses are charged at the rate of 45p per mile

AAAS001 AAA Securities Limited

9 October 2012

**SIP 9 - Time & Cost Summary**

Period 04/04/12 03/10/12

## Time Summary

Hours						Time Cost (£)	Average hourly rate (£)
Classification of work function	Partner	Manager	Other Senior Professionals	Assistants & Support Staff	Total Hours		
Administration & planning	0 30	7 50	2 80	3 50	14 10	2 945 00	208 87
Investigations	0 10	0 60	0 00	0 00	0 70	203 50	290 71
Realisations of assets	0 50	4 00	7 30	0 40	12 20	2,428 00	199 02
Trading	0 00	0 00	0 00	0 00	0 00	0 00	0 00
Creditors	1 40	5 10	11 50	0 60	18 60	3,702 00	199 03
Case specific matters	0 00	0 00	0 00	0 00	0 00	0 00	0 00
Total Hours	2 30	17 20	21 60	4 50	45 60	9,278 50	203 48
Total Fees Claimed						0 00	

AAAS001 AAA Securities Limited

9 October 2012

**SIP 9 - Time & Cost Summary**

Period 04/10/11 03/10/12

## Time Summary

Hours						Time Cost (£)	Average hourly rate (£)
Classification of work function	Partner	Manager	Other Senior Professionals	Assistants & Support Staff	Total Hours		
Administration & planning	1 30	10 20	23 20	10 90	45 60	7 715 50	169 20
Investigations	0 40	5 10	5 60	0 00	11 10	2,423 50	218 33
Realisations of assets	3 10	16 50	15 20	0 40	35 20	8 020 50	227 86
Trading	0 00	0 00	0 00	0 00	0 00	0 00	0 00
Creditors	4 50	11 50	22 80	1 60	40 40	8,331 50	206 23
Case specific matters	0 00	0 00	0 00	0 00	0 00	0 00	0 00
Total Hours	9 30	43 30	66 80	12 90	132 30	26,491 00	200 23
Total Fees Claimed						0 00	

**AAA Securities Limited ("the Company") (In Administration)****Overview of Administrators' time spent**

I detail below the key areas of work undertaken by the Joint Administrators and their staff in respect of this matter (the list is not exhaustive)

Administration and planning

- statutory requirements imposed by the Insolvency Act and Rules 1986 and insolvency bodies

Investigations

- statutory requirements under the Company Directors' Disqualification Act 1986,
- preliminary assessment of the Company in accordance with Statement of Insolvency Practice No 2

Realisation of assets

- liaising with the Joint Fixed Charge Receivers ("LPA's") with regard to the ongoing management of the two commercial and fourteen residential properties,
- liaising with Eversheds LLP in relation to lease variation deeds,
- review of Company's VAT registration to determine position,
- liaising with the LPA's with regard to the Company's VAT issues

Creditors

- liaising with the Bank of Ireland (UK) Plc a secured creditor,
- dealing with all classes of creditors, both oral and written

**Other professional costs of the administration**

The Joint Administrators have incurred administration expenses in connection with the instruction of the following parties -

Expense/Activity	Service Provider	Basis of selection	Basis of charging
Legal advice	Eversheds LLP	Insolvency experience	Times costs

Details of expenses incurred and paid during the period of this report are as follows -

Expense	Incurred during the period	Paid during the period	Incurred during the Administration	Paid during the Administration
	£	£	£	£
Legal fees & disbs	2,500 00	0 00	3,500 00	0 00
Total	2,500 00	0 00	3,500 00	0 00

**Category 1 disbursements**

Category 1 disbursements comprise specific expenditure which relates to the Administration and which are paid to an independent third party

Details of Category 1 disbursements incurred and paid during the Administration to date are as follows -

Expense	Incurred during the period	Paid during the period	Incurred during the Administration	Paid during the Administration
	£	£	£	£
Specific bond	0 00	0 00	30 00	30 00
Re-direction of mail	0 00	0 00	27 20	27 20
Search fees	0 00	0 00	11 00	11 00
Advertising	0 00	0 00	69 75	69 75
Total	0 00	0 00	137 95	137 95

**Category 2 disbursements**

Details of Category 2 disbursements incurred and paid during the Administration to date are as follows -

	Incurred during the period	Paid during the period	Incurred during the Administration	Paid during the Administration
	£	£	£	£
Postage & stationary	0 00	0 00	94 50	0 00
Total	0 00	0 00	94 50	0 00

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## A CREDITORS' GUIDE TO ADMINISTRATORS' FEES ENGLAND AND WALES

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### **1 Introduction**

- 1 1 When a company goes into administration the costs of the proceedings are paid out of its assets. The creditors, who hope eventually to recover some of their debts out of the assets, therefore have a direct interest in the level of costs, and in particular the remuneration of the insolvency practitioner appointed to act as administrator. The insolvency legislation recognises this interest by providing mechanisms for creditors to determine the basis of the administrator's fees. This guide is intended to help creditors be aware of their rights under the legislation to approve and monitor fees, explain the basis on which fees are fixed and how creditors can seek information about expenses incurred by the administrator and challenge those they consider to be excessive.

### **2 The nature of administration**

- 2 1 Administration is a procedure which places a company under the control of an insolvency practitioner and the protection of the court with the following objective

- rescuing the company as a going concern, or
- achieving a better result for the creditors as a whole than would be likely if the company were wound up without first being in administration,

or, if the administrator thinks neither of these objectives is reasonably practicable

- realising property in order to make a distribution to secured or preferential creditors

### **3 The creditors' committee**

- 3 1 The creditors have the right to appoint a committee with a minimum of 3 and a maximum of 5 members. One of the functions of the committee is to determine the basis of the administrator's remuneration. The committee is normally established at the meeting of creditors which the administrator is required to hold within a maximum of 10 weeks from the beginning of the administration to consider his proposals. The administrator must call the first meeting of the committee within 6 weeks of its establishment, and subsequent meetings must be held either at specified dates agreed by the committee, or when a member of the committee asks for one, or when the administrator decides he needs to hold one. The committee has power to summon the administrator to attend before it and provide information about the exercise of his functions.

### **4 Fixing the administrator's remuneration**

- 4 1 The basis for fixing the administrator's remuneration is set out in Rule 2.106 of the Insolvency Rules 1986, which states that it shall be fixed

- as a percentage of the value of the property which the administrator has to deal with,
- by reference to the time properly given by the administrator and his staff in attending to matters arising in the administration, or
- as a set amount

Any combination of these bases may be used to fix the remuneration, and different bases may be used for different things done by the administrator. Where the remuneration is fixed as a percentage, different percentages may be used for different things done by the administrator.

It is for the creditors' committee (if there is one) to determine on which of these bases, or combination of bases, the remuneration is to be fixed. Where it is fixed as a percentage, it is for the committee to determine the percentage or percentages to be applied, and where it is a set amount, to determine that amount. Rule 2.106 says that in arriving at its decision the committee shall have regard to the following matters

- the complexity (or otherwise) of the case,
- any responsibility of an exceptional kind or degree which falls on the administrator,
- the effectiveness with which the administrator appears to be carrying out, or to have carried out, his duties,
- the value and nature of the property which the administrator has to deal with

4 2 If there is no creditors' committee, or the committee does not make the requisite determination (and provided the circumstances described in paragraph 4 3 do not apply), the administrator's remuneration may be fixed by a resolution of a meeting of creditors having regard to the same matters as apply in the case of the committee. If the remuneration is not fixed in any of these ways, it will be fixed by the court on application by the administrator, but the administrator may not make such an application unless he has first tried to get his remuneration fixed by the committee or creditors as described above, and in any case not later than 18 months after his appointment.

4 3 There are special rules about creditors' resolutions in cases where the administrator has stated in his proposals that the company has insufficient property to enable a distribution to be made to unsecured creditors except out of the reserved fund which may have to be set aside out of floating charge assets.

In this case, if there is no creditors' committee, or the committee does not make the requisite determination, the remuneration may be fixed by the approval of –

- each secured creditor of the company, or
- if the administrator has made or intends to make a distribution to preferential creditors –
  - each secured creditor of the company, and
  - preferential creditors whose debts amount to more than 50% of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold approval,

having regard to the same matters as the committee would.

Note that there is no requirement to hold a creditors' meeting in such cases unless a meeting is requisitioned by creditors whose debts amount to at least 10 per cent of the total debts of the company.

4 4 A resolution of creditors may be obtained by correspondence.

## 5 Review of remuneration

5 1 Where there has been a material and substantial change in circumstances since the basis of the administrator's remuneration was fixed, the administrator may request that it be changed. The request must be made to the same body as initially approved the remuneration, and the same rules apply as to the original approval.

## 6 Approval of pre-administration costs

6 1 Sometimes the administrator may need to seek approval for the payment of costs in connection with preparatory work incurred before the company went into administration but which remain unpaid. Such costs may relate to work done either by the administrator or by another insolvency practitioner. Details of such costs must be included in the administrator's proposals.

6 2 Where there is a creditors' committee, it is for the committee to determine whether, and to what extent, such costs should be approved for payment. If there is no committee or the committee does not make the necessary determination, or if it does but the administrator, or other insolvency practitioner who has incurred pre-administration costs, considers the amount agreed to be insufficient, approval may be given by a meeting of creditors. Where the circumstances described in paragraph 4 3 apply, the determination may be made by the same creditors as approve the administrator's remuneration.

6 3 The administrator must convene a meeting of the committee or the creditors for the purposes of approving the payment of pre-administration costs if requested to do so by another insolvency practitioner who has incurred such costs. If there is no determination under these provisions, or if there is but the administrator or other insolvency practitioner considers the amount agreed to be insufficient, the administrator may apply to the court for a determination.



## **7 What information should be provided by the administrator?**

### **7.1 When seeking remuneration approval**

7 1 1 When seeking agreement to his fees the administrator should provide sufficient supporting information to enable the committee or the creditors to form a judgement as to whether the proposed fee is reasonable having regard to all the circumstances of the case. The nature and extent of the supporting information which should be provided will depend on

- the nature of the approval being sought,
- the stage during the administration of the case at which it is being sought, and
- the size and complexity of the case

7 1 2 Where, at any creditors' or committee meeting, the administrator seeks agreement to the terms on which he is to be remunerated, he should provide the meeting with details of the charge-out rates of all grades of staff, including principals, which are likely to be involved on the case

7 1 3 Where the administrator seeks agreement to his fees during the course of the administration, he should always provide an up to date receipts and payments account. Where the proposed fee is based on time costs the administrator should disclose to the committee or the creditors the time spent and the charge-out value in the particular case, together with, where appropriate, such additional information as may reasonably be required having regard to the size and complexity of the case. The additional information should comprise a sufficient explanation of what the administrator has achieved and how it was achieved to enable the value of the exercise to be assessed (whilst recognising that the administrator must fulfil certain statutory obligations that might be seen to bring no added value for creditors) and to establish that the time has been properly spent on the case. That assessment will need to be made having regard to the time spent and the rates at which that time was charged, bearing in mind the factors set out in paragraph 4.1 above. To enable this assessment to be carried out it may be necessary for the administrator to provide an analysis of the time spent on the case by type of activity and grade of staff. The degree of detail will depend on the circumstances of the case, but it will be helpful to be aware of the professional guidance which has been given to insolvency practitioners on this subject. The guidance suggests the following areas of activity as a basis for the analysis of time spent

- Administration and planning
- Investigations
- Realisation of assets
- Trading
- Creditors
- Any other case-specific matters

The following categories are suggested as a basis for analysis by grade of staff

- Partner
- Manager
- Other senior professionals
- Assistants and support staff

The explanation of what has been done can be expected to include an outline of the nature of the assignment and the administrator's own initial assessment, including the anticipated return to creditors. To the extent applicable it should also explain

- Any significant aspects of the case, particularly those that affect the amount of time spent
- The reasons for subsequent changes in strategy
- Any comments on any figures in the summary of time spent accompanying the request the administrator wishes to make
- The steps taken to establish the views of creditors, particularly in relation to agreeing the strategy for the assignment, budgeting, time recording, fee drawing or fee agreement
- Any existing agreement about fees
- Details of how other professionals, including subcontractors, were chosen, how they were contracted to be paid, and what steps have been taken to review their fees

It should be borne in mind that the degree of analysis and form of presentation should be proportionate to the size and complexity of the case. In smaller cases not all categories of activity will always be relevant, whilst further analysis may be necessary in larger cases.

- 7.1.4 Where the fee is charged on a percentage basis the administrator should provide details of any work which has been or is intended to be sub-contracted out which would normally be undertaken directly by an administrator or his staff

## 7.2 After remuneration approval

Where a resolution fixing the basis of fees is passed at any creditors' meeting held before he has substantially completed his functions, the administrator should notify the creditors of the details of the resolution in his next report or circular to them. In all subsequent reports to creditors the administrator should specify the amount of remuneration he has drawn in accordance with the resolution (see further paragraph 8.1 below). Where the fee is based on time costs he should also provide details of the time spent and charge-out value to date and any material changes in the rates charged for the various grades since the resolution was first passed. He should also provide such additional information as may be required in accordance with the principles set out in paragraph 7.1.3. Where the fee is charged on a percentage basis the administrator should provide the details set out in paragraph 7.1.4 above regarding work which has been sub-contracted out.

## 7.3 Disbursements and other expenses

There is no statutory requirement for the committee or the creditors to approve the drawing of expenses or disbursements, but there is provision for the creditors to challenge them, as described below. Professional guidance issued to insolvency practitioners requires that, where the administrator proposes to recover costs which, whilst being in the nature of expenses or disbursements, may include an element of shared or allocated costs (such as room hire, document storage or communication facilities provided by the administrator's own firm), they must be disclosed and be authorised by those responsible for approving his remuneration. Such expenses must be directly incurred on the case and subject to a reasonable method of calculation and allocation.

## 8 Progress reports and requests for further information

- 8.1 The administrator is required to send a progress report to creditors at 6-monthly intervals. The report must include
- details of the basis fixed for the remuneration of the administrator (or if not fixed at the date of the report, the steps taken during the period of the report to fix it),
  - if the basis has been fixed, the remuneration charged during the period of the report, irrespective of whether it was actually paid during that period (except where it is fixed as a set amount, in which case it may be shown as that amount without any apportionment for the period of the report),
  - if the report is the first to be made after the basis has been fixed, the remuneration charged during the periods covered by the previous reports, together with a description of the work done during those periods, irrespective of whether payment was actually made during the period of the report,
  - a statement of the expenses incurred by the administrator during the period of the report, irrespective of whether payment was actually made during that period,
  - the date of approval of any pre-administration costs and the amount approved,
  - a statement of the creditors' rights to request further information, as explained in paragraph 8.2, and their right to challenge the administrator's remuneration and expenses
- 8.2 Within 21 days of receipt of a progress report a creditor may request the administrator to provide further information about the remuneration and expenses (other than pre-administration costs) set out in the report. A request must be in writing, and may be made either by a secured creditor, or by an unsecured creditor with the concurrence of at least 5% in value of unsecured creditors (including himself) or the permission of the court.
- 8.3 The administrator must provide the requested information within 14 days, unless he considers that
- the time and cost involved in preparing the information would be excessive, or
  - disclosure would be prejudicial to the conduct of the administration or might be expected to lead to violence against any person, or
  - the administrator is subject to an obligation of confidentiality in relation to the information requested,

in which case he must give the reasons for not providing the information.

Any creditor may apply to the court within 21 days of the administrator's refusal to provide the requested information, or the expiry of the 14 days time limit for the provision of the information

**9 Provision of information – additional requirements**

The administrator must provide certain information about time spent on a case, free of charge, upon request by any creditor, director or shareholder of the company

The information which must be provided is –

- the total number of hours spent on the case by the administrator or staff assigned to the case,
- for each grade of staff, the average hourly rate at which they are charged out,
- the number of hours spent by each grade of staff in the relevant period

The period for which the information must be provided is the period from appointment to the end of the most recent period of six months reckoned from the date of the administrator's appointment, or where he has vacated office, the date that he vacated office

The information must be provided within 28 days of receipt of the request by the administrator, and requests must be made within two years from vacation of office

**10 What if a creditor is dissatisfied?**

10 1 If a creditor believes that the administrator's remuneration is too high, the basis is inappropriate, or the expenses incurred by the administrator are in all the circumstances excessive he may, provided certain conditions are met, apply to the court

10 2 Application may be made to the court by any secured creditor, or by any unsecured creditor provided at least 10 per cent in value of unsecured creditors (including himself) agree, or he has the permission of the court. Any such application must be made within 8 weeks of the applicant receiving the administrator's progress report in which the charging of the remuneration or incurring of the expenses in question is first reported (see paragraph 8 1 above). If the court does not dismiss the application (which it may if it considers that insufficient cause is shown) the applicant must give the administrator a copy of the application and supporting evidence at least 14 days before the hearing

10 3 If the court considers the application well founded, it may order that the remuneration be reduced, the basis be changed, or the expenses be disallowed or repaid. Unless the court orders otherwise, the costs of the application must be paid by the applicant and not as an expense of the administration

**11 What if the administrator is dissatisfied?**

11 1 If the administrator considers that the remuneration fixed by the creditors' committee is insufficient or that the basis used to fix it is inappropriate he may request that the amount or rate be increased, or the basis changed, by resolution of the creditors. If he considers that the remuneration fixed by the committee or the creditors is insufficient or that the basis used to fix it is inappropriate, he may apply to the court for the amount or rate to be increased or the basis changed. If he decides to apply to the court he must give at least 14 days' notice to the members of the creditors' committee and the committee may nominate one or more of its members to appear or be represented on the application. If there is no committee, the administrator's notice of his application must be sent to such of the company's creditors as the court may direct, and they may nominate one or more of their number to appear or be represented. The court may order the costs to be paid as an expense of the administration

**12 Other matters relating to remuneration**

12 1 Where there are joint administrators it is for them to agree between themselves how the remuneration payable should be apportioned. Any dispute arising between them may be referred to the court, the creditors' committee or a meeting of creditors

12 2 If the administrator is a solicitor and employs his own firm to act on behalf of the company, profit costs may not be paid unless authorised by the creditors' committee, the creditors or the court

12 3 If a new administrator is appointed in place of another, any determination, resolution or court order which was in effect immediately before the replacement continues to have effect in relation to the remuneration of the new administrator until a further determination, resolution or court order is made

- 12 4 Where the basis of the remuneration is a set amount, and the administrator ceases to act before the time has elapsed or the work has been completed for which the amount was set, application may be made for a determination of the amount that should be paid to the outgoing administrator. The application must be made to the same body as approved the remuneration. Where the outgoing administrator and the incoming administrator are from the same firm, they will usually agree the apportionment between them.

**13 Effective date**

This guide applies where a company enters administration on or after 6 April 2010, except where

- the application for an administration order was made before that date, or
- where the administration was preceded by a liquidation which commenced before that date